

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND COMPOUNDING  
PHARMACY, INC. PRODUCTS LIABILITY  
LITIGATION

**MDL No. 2419**  
**Master Docket No. 1:13-md-2419-FDS**

**Honorable F. Dennis Saylor**

THIS DOCUMENT RELATES TO:  
1:13-cv-10603-FDS

**PLAINTIFF ROSEANN FUSCO AND  
PAUL FUSCO'S UNOPPOSED MOTION  
& MEMORANDUM OF LAW FOR  
LEAVE TO AMEND AMENDED  
COMPLAINT**

ROSEANN FUSCO,

Plaintiff,

v.

NEW ENGLAND COMPOUNDING  
PHARMACY, INC., a foreign corporation,

Defendant.

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Pursuant to Fed. R. Civ. P. 15, and L.R. 15.1, Plaintiff Roseann Fusco seeks leave to amend her Amended Complaint in order to add a loss of consortium claim for her husband, Paul Fusco and additional defendants. In support thereof, Plaintiff state as follows:

1. Plaintiff's case was initially filed in the 15<sup>th</sup> Judicial Circuit in and for Marion County, Florida.
2. Defendant New England Compounding Pharmacy, Inc. ("NECC") removed the case from the 15<sup>th</sup> Judicial Circuit in and for Marion County, to the United States District Court for the Middle District of Florida.

3. After Plaintiff's case was removed to the Middle District of Florida, a stay was imposed as to NECC by Judge Henry J. Boroff in the United States Bankruptcy Court, District of Massachusetts, Eastern Division, case number 12-19882-HJB.
4. After the entry of the bankruptcy stay, Plaintiff's case in the Middle District of Florida was transferred to this Court.
5. Plaintiff seeks leave to amend her Amended Complaint to permit her husband, Paul Fusco, to assert a loss of consortium claim and to add the following defendants:  
Ameridose L.L.C., Medical Sales Management Inc., Medical Sales Management SW, Inc. GDC Properties Management, LLC, ARL Bio Pharma Inc., D/B/A Analytical Research Laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliario Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn Chinn and Liberty Industries, Inc. Ex. A, proposed Second Amended Complaint attached hereto.
6. In their proposed Second Amended Complaint, Plaintiff has kept NECC as a defendant, having initially named NECC in their Complaint. Plaintiff's motion to lift the stay in the Bankruptcy Court to file and serve the Second Amended Complaint as to NECC was granted. Ex. B, attached hereto.
7. Federal Rule of Civil Procedure 15(a)(2) provides that "The court should freely give leave when justice so requires." Here, justice requires that Mr. Fusco be permitted to assert his claim and that Plaintiffs be permitted to add the listed defendants above to this case that are potentially liable to Plaintiffs for her serious personal injuries she sustained from the tainted prednisone as a result of defendants' acts and omissions. Mrs. Fusco spent several months in the hospital and suffered severe complications from the fungal meningitis she contracted from the tainted prednisone.

8. Undersigned counsel has conferred with the only defendant currently in the case, NECC, and its counsel has no opposition to the instant motion.

WHEREFORE, Plaintiff requests that the Court enter an order permitting her leave to amend her Amended Complaint, attached hereto, and deem the Second Amended Complaint filed from the date the instant motion is filed.

**CERTIFICATION PURSUANT TO L.R. 7.1**

Undersigned counsel conferred with counsel for NECC and NECC has no objection to the instant motion.

**CERTIFICATION PURSUANT TO L.R. 15.1**

Undersigned Counsel has served the motion to amend upon the proposed new parties listed below 14 days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. The proposed new defendants are: Ameridose L.L.C., Medical Sales Management Inc., Medical Sales Management SW, Inc. GDC Properties Management, LLC, ARL Bio Pharma Inc., D/B/A Analytical Research Laboratories, Barry J. Cadden, Gregory Conigliaro, Lisa Conigliario Cadden, Douglas Conigliaro, Carla Conigliaro, Glenn Chinn and Liberty Industries, Inc.

Dated: January 28, 2014.

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on the date of the electronic filing.

/s/ Ervin A. Gonzalez